

1
2 UNITED STATES DISTRICT COURT
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4
5 DISTRICT OF NEVADA
6

7 Christina Jordan, et al.,
8

Plaintiffs

v.

9 Wyndham Vacation Ownership Inc., et al.,
10

Defendants

Case No. 2:21-cv-02228-CDS-NJK

Order Denying Defendants' Motion for
Plaintiffs to File a Consolidated Complaint
and Granting in Part Motion to Extend
Time to Respond to Pleadings

[ECF Nos. 18, 19]

11 Plaintiffs Christina Jordan, Renee Dean, and Wendy Regge each brought her own similar
12 lawsuit against their former employer, Wyndham Vacation Ownership, Inc., and their Wyndham
13 supervisor, Demetrius Barnes-Vaughn. All three plaintiffs bring claims for retaliation and
14 intentional infliction of emotional distress, while Jordan and Regge seek relief for violations of the
15 Family and Medical Leave Act. Regge also brings a claim under the Americans with Disabilities
16 Act. “[B]ecause of the common questions of law and fact involved” in the three cases, the parties
17 voluntarily stipulated to consolidate them into one. After the court granted the stipulation
18 consolidating the cases, the parties realized that that their understandings of the nature and scope
19 of the consolidation differ. The defendants contend that under the stipulation, the plaintiffs should
20 consolidate their claims into a single complaint for efficiency, economy, and clarity. The plaintiffs
21 protest that they never agreed to proceed under a single complaint and that the stipulated
22 consolidation was primarily administrative in nature. In keeping with the long-established
23 traditional interpretation of consolidation under Federal Rule of Civil Procedure (FRCP) 42, I
24 construe the parties’ stipulation to mean that the cases are consolidated for administrative

1 purposes only—including pretrial matters, like discovery. If the case should eventually go to trial,
2 the parties and the court will address at that time whether the plaintiffs' claims will be tried
3 together or separately. I order the plaintiffs to file copies of Dean and Regge's complaints in this
4 case within seven days of this order, and I order the defendants to file separate responsive pleadings
5 to each of the three complaints within 60 days of the plaintiffs' refiling of the other two complaints
6 so that this matter may proceed to be litigated.

7 I. Relevant background

8 Jordan and Regge filed their lawsuits in December 2021, and Dean brought hers the
9 following month. Compl., ECF No. 1; Compl., ECF No. 1 in *Dean v. Wyndham*, Case No. 2:22-cv-00141-
10 GMN-NJK; Compl., ECF No. 1 in *Regge v. Wyndham*, Case No. 2:21-cv-02235-JCM-DCA. Defense
11 counsel, Kyle Hoyt, then asked the plaintiffs' attorney, Amy Howard, if she would be “amenable to
12 stipulating to consolidate” the three matters “since they are related[.]” Email Ex., ECF No. 18-4 at 5.
13 Howard agreed to stipulate to consolidation and asked Hoyt to prepare a stipulation. *Id.* at 4–5.
14 Hoyt did so, and Howard approved of the stipulation without making changes. *Id.* at 4. The parties
15 filed the stipulation to consolidate. ECF No. 14. The Honorable United States District Court Judges
16 Gloria M. Navarro and James C. Mahan signed an order granting the stipulation and consolidating
17 the three cases under the earliest-filed case, *Jordan v. Wyndham*. ECF No. 15. The stipulation states
18 that “[t]he [p]arties in the actions have conferred regarding consolidat[ion of] the claims of all
19 three actions and have agreed to consolidate the *Dean*, *Jordan*[,] and *Regge* [a]ctions because of the
20 common questions of law and fact involved.” *Id.* at 2. The parties agreed in the stipulation that
21 consolidation was “for all proceedings going forward.” *Id.*

22 Once the court granted the stipulation, Hoyt asked Howard if the plaintiffs would agree to
23 file a single amended complaint, merging the three plaintiffs' claims into one pleading. ECF No. 18-
24 4 at 3. Howard explained that the plaintiffs “stipulated to consolidate so that discovery can be

1 streamlined, and motions can be heard and decided in one courtroom to avoid conflicting rulings.”
 2 *Id.* She further noted that they “did not contemplate merging the three lawsuits into one” and
 3 explained that the plaintiffs still expected the defendants’ timely responses to all three complaints.
 4 *Id.* Hoyt then indicated that the defendants would file a motion seeking entry of a consolidated
 5 complaint. *Id.* at 2. The defendants now move for the plaintiffs to consolidate the three complaints
 6 (ECF No. 18), a request that the plaintiffs oppose. ECF No. 20. The defendants also move for an
 7 extension of time to respond to the plaintiffs’ complaints, which the plaintiffs do not oppose.¹ Mot.
 8 to Extend Time, ECF No. 19; Non-Opposition, ECF No. 21.

9 **II. The parties’ stipulation to consolidate is administrative in nature.**

10 The defendants insist that the “[p]laintiffs have changed their position” because they now
 11 “assert[] that the stipulation was for ‘discovery only’ in contravention of the plain terms of the
 12 stipulation and the [o]rder.” ECF No. 18 at 2. The plaintiffs respond that “[e]ach case contains
 13 unique factual allegations to support separate charges brought by each of the women” and explain
 14 that “the women are also alleging causes of action against the [d]efendants that do not entirely
 15 overlap.” ECF No. 20 at 3. The plaintiffs clarify that they “agreed to consolidation at the suggestion
 16 of [d]efendants for purposes of convenience, economy of administration[,] and discovery only” and
 17 explain that “[t]he parties have not been able to reach an agreement as to the nature and the scope
 18 of the consolidation ordered since realizing their error.” *Id.* at 4. The plaintiffs rely on *Hall v. Hall*, a
 19 recent U.S. Supreme Court decision that discusses the history of Rule 42 and consolidation as
 20 traditionally understood by American courts. *Id.* at 5 (citing *Hall v. Hall*, 138 S.Ct. 1118 (2018)). The
 21 defendants do not address *Hall* in their motion or reply brief. *See generally* ECF Nos. 18, 23.

22 In *Hall*, the Supreme Court addressed the issue of whether one of multiple cases that was
 23 consolidated under Rule 42(a) is immediately appealable upon an order disposing of that case, even

24 ¹ I find the defendants’ motions suitable for disposition without oral argument. LR 78-1.

1 if another case remains ongoing. *Hall*, 138 S.Ct. at 1118. The Court discussed the history of the term
2 “consolidate,” acknowledging that it has “a legal lineage stretching back at least to the first federal
3 consolidation statute, enacted by Congress in 1813.” *Id.* at 1125 (citing Act of July 22, 1813, § 3, 3 Stat.
4 21 (later codified as Rev. Stat. § 921 and 28 U.S.C. § 734 (1934 ed.))). That statute “remained in force
5 for 125 years, until its replacement by Rule 42(a).” *Id.* “And just five years before Rule 42(a) became
6 law, [the Supreme Court] reiterated that, under the consolidation statute, consolidation did not
7 result in the merger of constituent cases.” *Id.* (citing *Johnson v. Manhattan R. Co.*, 289 U.S. 479, 496–97
8 (1933)). When Rule 42(a) was adopted, it “was expressly modeled on its statutory predecessor”
9 and because it did not define the term “consolidate,” “the term presumably carried forward the
10 same meaning [the Court] had ascribed to it under the consolidation statute for 125 years[] and had
11 just recently reaffirmed in *Johnson*.” *Id.* at 1128. “No sensible draftsman,” the Court reasoned, “let
12 alone a Federal Rules Advisory Committee, would take a term that had meant, for more than a
13 century, that separate actions do not merge into one, and silently and abruptly reimagine the same
14 term to mean that they do.” *Id.* at 1130.

15 Relying on this history, the *Hall* Court held that “one of multiple cases consolidated
16 under . . . Rule [42(a)] retains its independent character, at least to the extent [that] it is appealable
17 when finally resolved, regardless of any ongoing proceedings in other cases.” *Id.* The Court looked
18 to treatises for guidance as well, referencing one recognizing “that consolidated cases should
19 ‘remain separate as to parties, pleadings, and judgment.’” *Id.* at 1128 (quoting W. Simkins, *Federal
20 Practice* 63 (rev. ed. 1923)). In sum, the Court acknowledged that courts “enjoy substantial
21 discretion” in this area and may “consolidate cases for ‘all purposes’ in appropriate circumstances.”
22 *Id.* at 1131 (citing 9A Wright & Miller § 2383 (collecting cases)). But the Court stressed that the
23 traditional understanding of consolidation is that “consolidation does not merge [] suits; it is a
24

1 mere matter of convenience in administration, to keep them in step. They remain as independent as
2 before.” *Id.* at 1127 (quoting *Johnson v. Manhattan R. Co.*, 61 F.2d 934, 936 (2d Cir. 1932)).

3 Here, the parties stipulated to consolidate the three cases without defining which type of
4 consolidation was intended. ECF No. 14. As a remedy to this confusion, the defendants seek an
5 order directing the plaintiffs to file a single consolidated complaint, containing all three plaintiffs’
6 claims. ECF No. 18. While courts have the discretion to order the filing of a single consolidated
7 complaint, they are not required to do so. See Fed. R. Civ. P. 42(a)(3) (providing that “[i]f actions
8 before the court involve a common question of law or fact, the court may . . . issue any other orders
9 to avoid unnecessary cost or delay.”); LR 42-1 (noticing the court on related cases; consolidation of
10 cases). The robust history of Rule 42 indicates that consolidation is typically used for
11 administrative and convenience purposes, not to combine different parties’ causes of action. *Hall*,
12 138 S.Ct. at 1128. Because the parties’ views differ about the scope of their stipulation, I look to the
13 Supreme Court’s discussion in *Hall* and the longstanding history of consolidation, which indicates
14 that courts understand “consolidation not as completely merging the constituent cases into one,
15 but instead as enabling more efficient case management while preserving the distinct identities of
16 the cases and the rights of the separate parties in them.” *Id.*

17 Without accord from the parties, I construe their stipulation as an agreement to consolidate
18 Jordan, Dean, and Reggie’s cases into one for administrative purposes only—including pretrial
19 matters, like discovery. This will save the parties and the court valuable time and resources, as the
20 fruits of discovery—to the extent that they overlap with the facts of each plaintiff’s claims—can be
21 shared within this consolidated case, rather than needlessly repeated. Although the cases are
22 consolidated, all parties will retain their individual rights, as if the cases were proceeding
23 individually. This interpretation is consistent with the historical meaning of consolidation and
24 ensures that the “actions do not lose their separate identity because of consolidation.” *Hall*, 138 S.Ct.

1 at 1130 (quoting *Bank Markazi v. Peterson*, 578 U.S. 212, 233 (2016) (citation omitted)). If the claims
2 remain unresolved before trial, we will revisit at that time whether each plaintiff's claims will be
3 tried together or separately. I order the plaintiffs to file Dean's and Reggie's complaints in this case's
4 docket within seven days of this order, so that all of the operative complaints are individually
5 docketed in the now-consolidated case. And I grant in part the defendants' request for additional
6 time to respond to the pleadings, allowing them 60 days from the plaintiffs' re-filing of the other
7 two complaints to respond to all three complaints.

III. Conclusion

9 IT IS THEREFORE ORDERED that the defendants' motion for the plaintiffs to file a
10 consolidated complaint [ECF No. 18] is DENIED.

IT IS FURTHER ORDERED that plaintiffs Dean and Reggie must electronically file copies of their complaints from member cases 2:21-cv-02235-JCM-DJA and 2:22-cv-00141-GMN-NJK in this case's docket **within seven days** of this order. They are advised to file them as "notices," rather than as "complaints," to avoid incurring additional filing charges. And they must comply with all of this district's local rules, including Local Rule IA 10-1(b), which requires that all documents be filed in a searchable PDF format, not merely as scans.

17 IT IS FURTHER ORDERED that the defendants' motion to extend time to respond to the
18 pleadings [ECF No. 19] is GRANTED in part and denied in part. The defendants must file their
19 separate responses to the plaintiffs' three complaints within 60 days of the plaintiffs' refiling of
20 the other two complaints. The plaintiffs will then file their replies according to the typical briefing
21 schedule.

DATED: October 4, 2022.

Cristina D. Silva
United States District Judge